

NEW BEDFORD
JUL 27 1973
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
Plaintiff,

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Intervenor,

v.

CITY OF NEW BEDFORD, Massachusetts,
a political subdivision of the
Commonwealth of Massachusetts,
Defendant.

CONSERVATION LAW FOUNDATION
OF NEW ENGLAND, INC.,
Plaintiff,

v.

CITY OF NEW BEDFORD, Massachusetts,
a political subdivision of the
Commonwealth of Massachusetts,
Defendant.

CIVIL ACTION
NO.

87-2107-1

CIVIL ACTION
NO.

87-2498-1

CONSENT DECREE

WHEREAS, the plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint (the "Complaint") alleging that the defendant, the City of New Bedford, Massachusetts ("the City") has been and is in ongoing violation of section 301, 33 U.S.C. §1311, of the Clean Water Act, 33 U.S.C. §1251 et seq. (the "Act"), the requirements of certain Administrative Orders issued pursuant to section 309 of the Act, 33 U.S.C. §1319,

and the provisions of permits numbered MA 0100781, issued as National Pollutant Discharge Elimination System ("NPDES") permits pursuant to section 402 of the Act, 33 U.S.C. §1342;

WHEREAS, the plaintiff-intervenor, the Commonwealth of Massachusetts, has filed a complaint in intervention joining the allegations of the United States and further alleging that the City has been and is in ongoing violation of the Massachusetts Clean Waters Act, M.G.L. c. 21 §§ 26 et seq. (the "Massachusetts Act") and the provisions of Administrative Orders and the permits numbered M-120, issued by the Department of Environmental Quality Engineering of the Commonwealth of Massachusetts ("DEQE") under the Massachusetts Act;

WHEREAS, the plaintiff, Conservation Law Foundation of New England, Inc. ("CLF"), has filed a separate complaint which has been consolidated with the action filed by the United States and the Commonwealth of Massachusetts, alleging that the City has been and is in ongoing violation of the Act, the requirements of certain Administrative Orders issued pursuant to the Act, and the provisions of the permits numbered MA 0100781, issued by EPA under the Act and by DEQE under the Massachusetts Act;

WHEREAS, the City is a political subdivision of the Commonwealth of Massachusetts, duly organized and existing under the laws of the Commonwealth, and owns and operates wastewater and sewer works systems, including but not limited to the publicly owned treatment works ("the POTW") located at Fort Rodman in New Bedford, Massachusetts and certain combined sewer overflows ("CSOs") and outfalls;

WHEREAS, the City has been and is in violation of certain provisions of the Act, the Massachusetts Act, EPA and DEOE Administrative Orders and the terms and conditions of its state and federal discharge permits; and

WHEREAS, the parties agree, without adjudication of facts or law, that settlement of this matter is in the public interest and that entry of this Decree without further litigation is an appropriate way to resolve the dispute, and the parties consent to the entry of this Decree;

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed as follows:

I. STATEMENT OF CLAIM

The Complaints filed herein state claims upon which relief can be granted against the defendant pursuant to sections 301, 309, and 505 of the Act, 33 U.S.C. §§ 1311, 1319, and 1365 and pursuant to the Massachusetts Act.

II. JURISDICTION AND VENUE

The Court has personal jurisdiction over the parties to this Decree. The Court also has jurisdiction over the subject matter of this action pursuant to sections 309(b) and 505(a) of the Act, 33 U.S.C. §§ 1319(b) and 1365(a) and 28 U.S.C. §§ 1331, 1345 and 1355 and under the doctrine of pendent jurisdiction. This District is the proper venue for this action pursuant to 28 U.S.C. §1391(b) and 33 U.S.C. §§ 1319(b) and 1365(c)(1). The City has waived all objections it might have raised to either such jurisdiction or venue.

III. APPLICABILITY

The provisions of this Decree shall apply to and be binding upon the parties to this action, their officers, agents, servants, employees, and successors, and all persons, firms, and corporations having notice of this Decree and acting in active concert and participation with a party. The City shall give notice and a true copy of this Decree to any of its successors in interest prior to any transfer of ownership or operation of the POTW and/or CSOs, and shall simultaneously notify EPA Region I, the United States Attorney for the District of Massachusetts, DEQE, the Environmental Protection Division of the Massachusetts Department of the Attorney General and CLF, at the addresses specified in section VII of this Decree, of such succession in interest and that such notice and copy has been given by the City.

IV. DEFINITIONS

For the purposes of this Decree, terms shall be defined as follows:

Average means the arithmetic average of the values for a specified parameter as measured from samples collected during a specified period for all characteristics except fecal coliforms; for fecal coliforms, "average" means the geometric average of all values collected during the specified period, zero values being treated as values of one (1).

Average monthly discharge limitation means the highest allowable average of daily discharges of a specific pollutant characteristic measured over a monitoring month.

Commence construction means begin on-site construction work including but not limited to site preparation.

Complete construction means substantial completion of the facility with the ability to accept design flows.

Effluent means the discharge from the POTW owned and operated by the City.

Effluent limitation means any restriction imposed on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from the POTW.

Full implementation of a manual, plan, or program means that subject endeavor has full staffing and full operational and maintenance support and that the manual, plan, or program is being performed as intended.

Industrial user means any entity discharging non-domestic wastewater into the POTW.

Significant IUs means all categorical industrial users and all industrial users that discharge over 25,000 gallons of process wastewater per day, or contribute 5% of the dry weather hydraulic or organic capacity of the POTW, or have a reasonable potential to adversely effect the proper operation of the POTW.

V. COMPLIANCE PROGRAM AND SCHEDULES

The City shall undertake the programs set forth below to attain and thereafter maintain compliance with the secondary treatment, operation and maintenance, pretreatment, combined sewer overflow, and other applicable requirements of the Act, the Massachusetts Act, and all applicable state and federal regulations and permits. Under these programs, from the date of entry of this Decree until December 1, 1994 (the date set forth at V(I)(15)), the City shall at a minimum maintain compliance with all interim effluent limitations imposed by this Decree. By no later than December 1, 1994 (the date set forth at V(I)(15)), the City shall achieve compliance, and thereafter maintain compliance with the secondary treatment effluent limita-

tions imposed by the Act, the Massachusetts Act, any regulations promulgated under either statute, and all requirements of any discharge permit in effect at that time and thereafter. Further, at the dates to be set for implementation of the CSO abatement projects pursuant to Paragraph V(J), the City shall achieve and thereafter maintain compliance with all water quality and other standards and restrictions imposed by the Act, the Massachusetts Act, any regulations promulgated under either statute, and all requirements of any discharge permit in effect at that time and thereafter. All necessary planning and construction of the secondary treatment wastewater facilities ("secondary treatment facilities"), sludge disposal facilities, and related facilities, the CSO abatement projects, and the implementation of the City's pretreatment program shall be completed according to the following compliance schedules. Each required task shall be completed by the City on or before the deadline specified in the following schedules.

<u>TASK</u>	<u>DEADLINE</u>
A. <u>IMMEDIATE IMPROVEMENTS TO FORT RODMAN PLANT</u>	
1. The City shall complete the improvements to Fort Rodman Plant, as approved by DEQE on September 30, 1985, as follows:	
Modifications to the sludge and scum piping system; modification to the centrifuge feed piping; installation of chlorine piping, scum box working platform, scum collectors, air bleeder pipes, revised seal water piping, thickened	

sludge flow meters, polymer feed system, lime stabilization system, wastewater samplers, air cooling system, chlorine residual monitor, and thickened sludge density meters; and modification of the grating at the chlorine contact tanks and the overflow weirs on the primary sedimentation tanks.

January 21, 1988

2. The City shall achieve full operation of the immediate improvements to Fort Rodman Plant.

May 1, 1988

B. ADDITIONAL IMPROVEMENTS TO FORT RODMAN PLANT

1. The City shall submit to EPA and DEQE a report evaluating the need for additional improvements to the Fort Rodman Plant which may include the following:

Construction of and improvements to air handling unit access platform and air handling system; plant water system modifications; extension of plant water yard piping; construction of and improvements to inlet channel shelter and security fencing; noise control in pump rooms; and lowering of raw wastewater pump motors and pump access platform.

July 1, 1987

2. The City shall complete the following projects as approved by EPA and DEQE: extension of plant water yard piping, construction of improvements to the inlet channel shelter, and noise control in the pump room.
3. The City shall commence construction of all remaining additional improvements as approved by EPA and DEQE.
4. The City shall complete construction of additional improvements.

November 30, 1987

April 1, 1988

March 31, 1989

C. HOWARD AVENUE PUMP STATION

1. The City shall complete construction of the Howard Avenue Pump Station.

November 1, 1987

D. ELIMINATION OF DRY WEATHER DISCHARGES

1. The City shall submit a report to EPA, DEQE, and CLF on projects required to eliminate dry weather discharges from CSO outfalls. July 31, 1987
2. The City shall commence construction of projects required to eliminate dry weather discharges from CSO outfalls, as approved by EPA and DEQE. September 1, 1988
3. The City shall complete construction of projects required to eliminate dry weather discharges from CSO outfalls, as approved by EPA and DEQE. December 1, 1989
4. The City shall eliminate dry weather discharges from CSO outfalls. March 1, 1990

E. GRIT MANAGEMENT

1. The City shall submit a report to EPA, DEQE, and CLF concerning best management practices, short term maintenance project or projects, and long term capital programs for grit management for the City sewer and treatment system. September 1, 1987
2. The City shall submit a plan and timetable for long term capital programs, as approved by EPA and DEQE, to the Court together with a motion that the plan and timetable be incorporated into this Decree. October 31, 1987

If, by October 31, 1987, the parties are unable to agree on the nature or schedule for the long term capital programs, then any party may, thereafter, move the Court to order that a proposed project or schedule be incorporated into this Decree.
3. The City shall commence and continue implementation of best management practices and will complete short-term maintenance project or projects as approved by EPA and DEQE. January 31, 1988

F. SEWER SYSTEM INSPECTION

1. The City shall submit to EPA, DEQE, and CLF a report containing a detailed program for regular sewer line inspection, repair and maintenance and shall commence to implement the program.
2. The City shall achieve full implementation of the sewer system inspection, repair and maintenance program, as approved by EPA and DEQE, and thereafter shall continue to conform to the requirements and objectives of the program.

August 1, 1987

October 31, 1987

G. OPERATION AND MAINTENANCE MANUAL

1. The City shall submit a revision to the City's operation and maintenance (O&M) manual to EPA and DEQE for review, including without limitation provision for routine grit pit cleaning, chlorine contact chamber sludge removal, and primary settling tank weir adjustments.
2. The City shall implement the use of the O&M manual, as approved by EPA and DEQE, and thereafter shall continue the use of the O&M manual in accordance with its requirements and objectives.

August 15, 1987

October 15, 1987

H. STAFFING PLAN

1. The City shall submit a staffing plan to EPA and DEQE for review which shall achieve compliance with state staffing regulations, and which shall include an organizational chart and delineation of responsibility for the sewer system, pump station and wastewater treatment facility.
2. The City shall have partially implemented the measures in the staffing plan, as approved by DEQE and EPA, and shall have, at a minimum, hired four additional laborers.

August 1, 1987

October 1, 1987

3. Until such time as the staffing plan, as approved by DEQE and EPA, has been fully implemented, the City shall use personnel supplied by its Facilities Plan engineering consultant to maintain a regular overview presence at the plant. Through this personnel, the City shall insure that the plant is being operated in accordance with the O&M manual, that routine maintenance is being carried out on schedule, that all sampling and analysis required by the permit and by this Decree is being done properly, and that the City Department of Public Works Director is immediately informed of deficiencies and recommended corrective actions. The City shall also submit to EPA and DEQE regular reports describing the status of equipment, the maintenance that has been done, and other operational details as required by EPA and DEQE. This requirement shall commence on

September 30, 1987

4. The City shall have fully implemented and shall continue to implement the staffing plan, as approved by DEQE and EPA.

October 1, 1988

I. SECONDARY WASTEWATER TREATMENT
FACILITIES PLANNING, SITING AND
CONSTRUCTION

1. The City shall submit to EPA, DEQE, and CLF a preliminary working draft of the screening study being carried out in accordance with the scope of work dated January 8, 1987, as amended to include sludge siting. The working draft shall include a listing of the final sites that will be assessed in detail for final location of the wastewater treatment plant and sludge disposal, the methodology and criteria being used for evaluating sites, all of the information available on each of the final sites, and the major environmental, physical, and implementation issues that relate to each site. The working draft should also contain a preliminary

estimate of the quality of a new plant's effluent, emissions, and sludge and a preliminary identification of the extent of combined sewer overflows that should be treated at available treatment plant sites.

August 15, 1987

2. The City shall submit to EPA and DEQE for review and comment and to CLF a Draft Phase I Facilities Plan for secondary treatment and sludge disposal facilities which shall include a draft site screening study in accordance with the scope of work dated January 8, 1987, as modified to meet requirements stated by the MEPA unit of the State Executive Office of Environmental Affairs.

November 15, 1987

3. The City shall submit to DEQE, EPA, and CLF a Final Phase I Facilities Plan, including a final site screening study, which fulfills the requirements of EPA and DEQE.

January 8, 1988

4. The City shall commence the Phase II Facilities Plan.

March 15, 1988

5. The City shall submit to EPA and DEQE for review and comment and to CLF a Draft Phase II Facilities Plan.

September 15, 1988

6. The City shall submit to EOEA a draft Environmental Impact Report (EIR), including analysis of siting and construction of secondary wastewater treatment and sludge disposal facilities.

September 15, 1988

7. The City shall submit to DEQE, EPA, and CLF a Final Phase II Facilities Plan which fulfills the requirements of EPA and DEQE.

December 15, 1988

8. The City shall submit to EOEA a Final EIR and shall make a final selection of plant site, subject to final approval in state and federal environmental reviews.

December 15, 1988

9. The City shall commence preparation of plans and specifications for the secondary treatment and sludge disposal facilities.

March 1, 1989

10. The City shall submit to EPA and DEQE the final plans and specifications for secondary wastewater treatment and sludge disposal facilities which fulfill the requirements of EPA and DEQE. April 1, 1990
11. The City shall advertise for bids for secondary wastewater treatment and sludge disposal facilities. September 1, 1990
12. The City shall award the contract for construction of secondary treatment and sludge disposal facilities. February 1, 1991
13. The City shall commence construction of secondary wastewater treatment and sludge disposal facilities in accordance with the contract awarded in V(I)(12). April 1, 1991
14. The City shall complete construction of secondary wastewater treatment and sludge disposal facilities. June 1, 1994
15. The City shall achieve full operation of the secondary wastewater treatment and sludge disposal facilities in compliance with effluent limitations and other requirements of the Act, Massachusetts Act, and all applicable regulations and permits. December 1, 1994

The construction schedule in subsection V(I)(14) of this Decree has been established to achieve an enforceable basis for compliance by the City with the secondary treatment requirements of the Act. At the time of lodging of this Decree, the City has not yet selected a site for construction of secondary wastewater treatment facilities. The City will not be able to select a site until it has completed development of the relevant environmental and engineering information. If, at the time of site selection, it becomes apparent that there are material impediments to completion of construction within the time

period set forth at V(I)(14) under circumstances beyond the control of the City, because of engineering or environmental reasons resulting from the site selected, the parties, by agreement, or any party acting singly may petition the Court for an extension of the time for completion of construction for a period no longer than that necessitated by such circumstances. No such petition may be made unless, by January 15, 1989, the City notifies all parties of any such circumstances which it believes will require an extension of the construction schedule and the period of time by which it proposes to seek to extend the schedule. Unless all parties agree, the City shall bear the burden of proving that an extension is necessary and results from circumstances beyond the control of the City because of engineering or environmental reasons resulting from the site selected and that the time period of the extension it seeks is the minimum necessary to accommodate such circumstances. This paragraph shall not be construed as a limitation of section VIII of this Decree.

In addition, if, by October 1, 1990, based on circumstances not known as of the date of lodging of this Decree and totally beyond the control of the City, the City claims inadequate financial capability to construct in accordance with the schedule in V(I)(14) of this Decree, the City may, on or before October 1, 1990, raise the issue of financial capability for the Court's consideration in seeking an extension of the construction schedule. In order to obtain any such extension, the City must establish that

an extension is required by such circumstances and that the City has taken all possible steps independent of grant funding to ensure that it maintains adequate financial capability to fund steps necessary to achieve compliance within the time period set forth at V(I)(14). The City shall also bear the burden of proving that the extension it seeks is the minimum time period necessary to accommodate the circumstances.

J. COMBINED SEWER OVERFLOW PROGRAM

The City shall complete the following actions on or before the specified dates, as initial steps toward bringing combined sewer overflows into compliance with the Act and the Massachusetts Act. Plans and schedules submitted under this section may, when approved by EPA and DEQE, and consented to by CLF, be filed by EPA or DEQE with the Court as a stipulation by the City and the parties, together with a motion that they be incorporated into this Decree. If the City fails to make any submission required under this section to the satisfaction of EPA, DEQE, and CLF, then EPA, DEQE or CLF may, in addition to seeking any other relief, submit a proposed schedule to the Court for incorporation directly into this Decree.

1. The City shall submit to EPA and DEQE for approval, and to CLF, a revised scope of work for the CSO Facilities Plan (including Phase III) which fulfills the requirements of EPA and DEQE. Phase III of the CSO Facilities Plan shall identify all projects necessary to meet permit limits and requirements for discharges from CSO outfalls and shall include an implementation plan and proposed construction schedule for the projects.

February 1, 1988

2. The City shall submit a Draft CSO Facilities Plan (including Phase III) with appropriate supporting documentation, in accordance with the approved scope of work, to EPA, DEQE and CLF. April 1, 1989
3. The City shall submit to EPA, DEOE and CLF a final CSO Facilities Plan (including Phase III) with appropriate supporting documentation which fulfills the requirements of EPA and DEQE in accordance with the approved scope of work for the CSO Facilities Plan and which will include implementation and construction schedules for CSO abatement projects to be implemented and constructed. July 1, 1989

Upon approval by EPA and DEQE of the Final CSO Facilities Plan, including implementation plans and schedules, and with the consent of CLF, the City shall, or any other party may, file with the Court a motion to incorporate into this Decree the CSO abatement projects and implementation and construction schedules from the Final CSO Facilities Plan, as approved. If, by July 1, 1989, the parties are unable to agree on the nature of the Combined Sewer Overflow projects or a schedule for their implementation, then any party may move this Court to order that a proposed project, schedule, or plan be incorporated into this Decree. The parties agree that the City's obligations to comply with the requirements of the Act and all applicable permits for CSO discharges are not conditioned on the existence of federal or state grant funding. If the parties are unable to agree on a schedule for completing necessary CSO abatement projects, the City reserves its right to raise the issue of financial capacity for the Court's consideration in determining the appropriate schedule.

K. PRETREATMENT PROGRAM

1. The City shall have issued permits to 80% of all of the entities as to whom the City has information are industrial users discharging into the POTW and who must receive permits under the City's pretreatment program. October 1, 1987
2. The City shall have issued permits to all of the entities as to whom the City has information are industrial users discharging into the POTW and who must receive permits under the City's pretreatment program. November 1, 1987
3. The City shall have established procedures to ensure compliance with the Pretreatment Program, as required by 40 C.F.R. §403.8(f)(2), including written enforcement response procedures consistent with EPA guidance entitled "Pretreatment Compliance Monitoring and Enforcement Guidance," dated September, 1986. November 1, 1987
4. The City shall have conducted on-site inspections of all of the entities as to whom the City has information are significant industrial users ("significant IUs") discharging into the POTW. November 1, 1987
5. The City shall have conducted on-site inspections of all industrial users discharging into the POTW which are permitted or required to be permitted. May 1, 1988
6. From the date hereof and continuing until the termination of this Decree, the City shall submit semi-annual pretreatment progress reports to EPA, DEQE, and CLF covering the following periods:

January - June and July - December (the "Semi-Annual Pretreatment Reports"). The semi-annual pretreatment reports must be submitted no later than the twenty-fifth day after the end of the reporting period. The semi-annual pretreatment reports shall describe all implementation and enforcement during the semi-annual reporting period, including actions taken pursuant to its written enforcement procedures, and

shall include, without limitation, the following:

- a. An updated master list of all significant IUs discharging to the POTW, indicating compliance or noncompliance with the following:
 1. baseline monitoring report requirements;
 2. compliance status report requirements;
 3. self-monitoring report requirements;
 4. categorical standards; and
 5. local limitations.
 - b. A summary of actions taken during the reporting period for the activities listed below, including the total number of actions in each category, a description of the actions taken, and an identification of the IUs subject to such actions.
 1. Industrial Wastewater Discharge Permits issued;
 2. facilities inspected;
 3. facilities sampled;
 4. compliance schedules issued;
 5. notices of violations issued;
 6. administrative orders issued;
 7. criminal or civil suits filed; and
 8. penalties obtained (and amounts).
 - c. A narrative description of Pretreatment Program implementation and proposed changes, if any, in the program (e.g., funding, staffing, ordinances, regulations, rules, or statutory authority). All such changes in the EPA approved program are subject to EPA approval.
 - d. A summary of all data not previously submitted to EPA on the City's POTW influent, effluent, and sludge and any bioassay data.
7. The City shall notify EPA at least 60 days in advance of any changes in its pretreatment program, and of any proposals to tie in new industrial users in New Bedford, Acushnet or Dartmouth. The City shall not make any changes in its program and shall not tie in new industrial users in Acushnet or Dartmouth without EPA approval.

L. FACILITATING COMPLIANCE

To facilitate compliance with subparagraphs B(2) and (3), D(2), E(2) and (3), F(2), G(2), H(2) and (4), I(3), (4), (7), (9), and (11), and J(2) and (3) above, EPA and/or DEOE shall

notify the City within a reasonable time after the receipt of required submissions if the submission is unsatisfactory or incomplete or if the submission of additional material is required. The City shall respond promptly to any such request for revised or additional information. Moreover, when the City must obtain EPA or DEQE approval in order to meet any compliance deadline, the City bears the burden of satisfying all reasonable EPA and DEQE comments and requests for supplementation or revision so as to insure that the compliance deadline is met. If the City's submission under subparagraphs B(1), D(1), E(1), F(1), G(1), H(1), I(2), (3), (5), (7), or (10), or J(1) or (2) is not acted upon by EPA or DEQE within a reasonable time, the City may petition the Court to modify the schedule to the extent it is affected by the delay but only to the extent that the delay is not the result of the City's failure to respond promptly and comprehensively to any reasonable request for revised or additional material.

VI. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. INTERIM LIMITATIONS

1. The City shall comply with the following interim limitations and monitoring requirements from the date of entry of this Decree until further order of the Court or until compliance with section VI(B) is required:

Parameter:

Tons of dry solids removed from the plant by the sludge processing train.

Monthly total: 90

Three month moving average (1): 100

Twelve month moving average (1): 120

Measurement frequency: Daily

Sample type and locations: Composite made up of samples taken twice per shift (approximately six hours of operation). The size of the sample shall be in direct proportion to the pumping rate. Samples to be taken at the treatment plant from the centrifuge feed pipe and from the centrifuge centrate pipe.

<u>Effluent Charact- eristic</u>	<u>Discharge Limitations</u>		<u>Measurement Frequency (2)</u>	<u>Sample Type</u>
	<u>Monthly Average</u>			
Fecal Coliform	200/100 ml (3)		3xDaily 7 days/wk	Grab
NOAEL	(See Footnote 4)			
NOEC	(See Footnote 4)			

- (1) A moving average is the arithmetic mean of the monthly totals for the immediately preceding three or twelve month period.
- (2) Sampling location(s) shall be chosen to be representative of actual discharge from outfalls 001 and 002.
- (3) The fecal coliform interim effluent limitations applicable to outfalls 001 and 002 may be re-evaluated after three months' data is collected at the sampling location(s) (September 1, 1987 through November 30, 1987). After the review of the three months (i.e., September, October, and November of 1987) of fecal coliform data from outfalls 001 and 002 collected by the City and submitted to EPA and DEQE by December 31, 1987, the City may apply to the Court for modification of the fecal coliform interim effluent limitations. All parties agree that until any modification of these limitations, the fecal coliform interim effluent limitations in paragraph VI(A) are fully applicable to outfalls 001 and 002.

- (4) The City shall conduct toxicity testing in conformance with the requirements of section I.A.5 of the NPDES Permit number MA 0100781 issued on November 17, 1986 ("1986 Permit"). For the purpose of evaluating toxicity test results pursuant to section I.A.5.b. of the 1986 Permit, the NOAEL and NOEC limitations in section I.A.1. of the Permit will apply. After reviewing the results of three months of toxicity testing, the City may propose revisions to the testing program as modifications to its 1986 Permit provided that the City will comply with the 1986 Permit monitoring requirements unless and until federal and state permit modifications are approved. In addition to the requirements of section I.A.5. of the 1986 Permit, any toxicity reduction evaluation by the City, while this Decree is in effect, shall evaluate and identify measures which can be taken, if any, to minimize toxicity in any interim period before compliance with the effluent toxicity limitations in the 1986 Permit. Upon completion of any toxicity reduction evaluation by the City, a schedule for implementing the toxicity reduction measures identified therein, as approved by EPA and DEOE, may be incorporated as a requirement of this Decree upon motion by any party.

During the period that interim limitations under section VI(A) are in effect, the City shall comply with the following conditions of the permit: All of the monitoring, reporting and notice requirements of the permit including the monitoring of BOD and TSS influent and effluent; the discharge limitations set forth in section I.A.1.a. for chlorine; all limitations and requirements set forth in sections I.A.1.c., I.A.1.d., I.A.3.c., I.A.4., I.A.5., I.A.6., I.A.7., I.A.9., and I.B.; and all general conditions of the permit.

2. By August 31, 1988, the City shall submit to EPA, DEQE, and CLF a report evaluating the effluent data collected during the months of August, 1987 through July, 1988 and evaluating the operation of the plant for the same period. Based on this information, the report shall propose a set of interim effluent

limitations which will measure either percent removal or effluent concentrations, or both, for BOD, TSS, SS, and oil and grease. By September 30, 1988, the parties shall attempt to agree to limitations which will measure plant performance such as percent removal or effluent limitations, or both, for BOD, TSS, SS, and oil and grease. In accordance with paragraph 4 of this section, the parties shall move the Court for incorporation of any such limitations into this Decree.

3. The City shall hire an outside contractor to do the sampling, analysis, and reporting required by paragraphs A(1) and A(2) above for the period from November 15, 1987 through July 31, 1988. Prior to initiating the sampling program, the contractor shall ascertain that the sampling points are located so as to ensure that a representative sample will be taken.

4. Future interim effluent limitations may modify the limits contained in A(1) by adding or substituting additional types of effluent limitations or by modifying the limitations contained in A(1). If the limits contained in A(1) are modified by agreement of the parties, the parties shall jointly move the Court for the incorporation of modified interim effluent limitations. If the parties are unable to agree on modified interim limitations, any party may move the Court for the incorporation of modified interim limitations.

5. The interim effluent limitations established under sections VI(A)(1) or (4) above shall apply until December 1, 1994, (the date set forth at V(I)(15)), except as modified temporarily in the limited circumstances specified in section VI(A)(6) below.

6. If the City believes that the treatment capacity of the Fort Rodman plant will be materially impaired as a necessary result of a specific upgrade or construction activity required by section V(A), (B) or (I) above so that the City will be temporarily unable to meet the interim effluent limitations established under section VI(A)(1) or (4) above, the City shall give EPA and DEQE at least thirty days notice, unless EPA and DEQE agree otherwise in writing, of the anticipated material impairment in treatment capacity, the reasons therefor, and the anticipated duration thereof. If EPA and DEQE agree that the City will temporarily be unable to meet the interim effluent limitations established under section VI(A)(1) or (4) above as a necessary result of a specific upgrade or construction activity required by section V(A), (B) or (I), the interim effluent limitations may be modified temporarily in writing by EPA and DEQE. If EPA and DEQE do not agree to modify the interim effluent limitations temporarily as specified above, the City may petition the Court for a temporary modification of the interim effluent limitations. With regard to any such petition, the City shall bear the burden of proof that (1) the treatment capacity of the Fort Rodman plant will temporarily be materially impaired as a necessary result of a specific upgrade or construction activity required by section V(A), (B), or (I) so that the City will be unable to meet the effluent limitations established under section V(A)(1) or (4); and (2) the number of days that this will occur as a matter of necessity. The City shall maximize the

removal of pollutants during any such time period when treatment capacity is so affected. All monitoring requirements shall continue to be applicable during any such periods except to the extent the activity necessitating the adjustment of the limit renders such monitoring impossible.

7. For any time periods during which interim effluent limitations established under section VI(A)(1) or (4) are modified pursuant to section VI(A)(6) above, the City shall include in its monthly reports under section VII(1) an identification of the time periods subject to modification pursuant to section VI(A)(6), a description of the City's efforts to maximize the removal of pollutants during such time periods, and the results of monitoring during such time periods. When monitoring has been rendered impossible under the circumstances described in VI(A)(6) above, the City shall explain in its monthly report(s) what made the monitoring impossible.

B. FINAL EFFLUENT LIMITATIONS

On and after December 1, 1994 (the date set forth at V(I)(15)), the City shall comply with the final effluent limitations and monitoring requirements required by the Act, the Massachusetts Act, the regulations promulgated under each Act, respectively, and all applicable permits.

VII. REPORTING

1. On or before the twenty-fifth day of each calendar month following the calendar month in which this Decree is entered, and continuing until termination of this Decree, the City shall submit in writing to EPA, the United States Attorney for

the District of Massachusetts, DEQE, the Attorney General of the Commonwealth of Massachusetts, and CLF a report detailing the status and progress of projects under this Decree. The report shall include a description of the compliance or noncompliance with the schedules set forth in section V and a projection of the work to be performed pursuant to section V during the three month period to follow. Where there is noncompliance with a schedule set forth in section V, the report shall include a statement of any corrective action taken or to be taken. Notification to EPA and DEQE pursuant to this section of any anticipated delay shall not excuse the delay.

The report shall also set forth the effluent limitation monitoring results from the POTW for the most recent monthly period. The report shall contain an explanation of any violation of the effluent limitations, including a statement of any corrective action taken or planned to be taken.

2. All submissions required by this Decree to be sent by the City to EPA, the United States Attorney for the District of Massachusetts, DEQE, the Attorney General of the Commonwealth of Massachusetts, and/or CLF, shall be made in writing to the following addresses, respectively, unless the United States, the Commonwealth or CLF gives the City written notice that another person has been designated to receive such report or notice:

TO THE UNITED STATES ATTORNEY

NICHOLAS C. THEODOROU
Assistant U.S. Attorney
1107 John W. McCormack Post Office
and Courthouse
Boston, MA 02109

TO EPA

ANTHONY V. DEPALMA, CHIEF
Permit Compliance Section (WCC-2103)
U.S. Environmental Protection Agency, Region I
J.F. Kennedy Federal Building
Boston, Massachusetts 02203

PETER W. KENYON, ESQ.
Office of Regional Counsel (RRC-2203)
U.S. Environmental Protection Agency
J.F. Kennedy Federal Building
Boston, Massachusetts 02203

TO DEQE

WILLIAM P. GAUGHAN, ESQ.
Division of Water Pollution Control
Department of Environmental Quality Engineering
One Winter Street
Boston, MA 02108

TO THE ATTORNEY GENERAL OF THE COMMONWEALTH

LEE P. BRECKENRIDGE, CHIEF
Environmental Protection Division
Department of the Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, Massachusetts 02108

TO CONSERVATION LAW FOUNDATION

J. CLEVE LIVINGSTON, ESQ.
Conservation Law Foundation
of New England, Inc.
3 Joy Street
Boston, MA 02108

3. The aforementioned reporting requirements do not
relieve the City of its obligation to submit any other
reports or information required by the Act or the Massachusetts

Act, the regulations promulgated under each Act, respectively, any applicable permit, or any local requirements.

VIII. FORCE MAJEURE

1. If any violation of any provision of this Decree by the City occurs, the City shall notify the Court, the United States Attorney, EPA, the Attorney General of the Commonwealth and CLF in writing within fifteen days of the violation or of any event or events which have caused the violation. The notice shall describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken and to be taken by the City to prevent or minimize the violation, and the timetable by which those measures will be implemented. The City shall also notify the persons and entities specified above in accordance with the requirements of this section within fifteen days when the City has reason to believe that a situation has occurred that is likely to cause a violation of any provision of his Decree. The City shall adopt all reasonable measures to avoid or minimize any such violation. Failure by the City to comply with the notice requirements of this section shall render section VIII(2) and (3) void and of no effect as to the particular incident involved, and shall constitute a waiver of the City's right to request an extension of time for its obligations under this section based on the incident.

2. If the parties agree that the violation of a provision of this Decree has been or will be caused by circumstances beyond the control of the City and beyond the control of any entity controlled by the City, including the City's consultants and contractors, and that the City could not have reasonably foreseen and prevented such violation, the time for performance of affected requirements of this Decree shall be extended in writing by EPA, DEQE and CLF for a period not to exceed the actual unavoidable delay resulting from such circumstances, and stipulated penalties shall not be due for the number of days of noncompliance that were caused by such circumstances.

3. If the parties are unable to agree whether the violation was caused by circumstances beyond the control of the City and of any entity controlled by the City or on the number of days of noncompliance that were caused by such circumstances, the matter may be submitted by any party to the Court for resolution. If the violation is then determined to have been caused by circumstances beyond the control of the City and of any entity controlled by the City, including the City's consultants and contractors, and it is determined that the City or any entity controlled by the City could not reasonably have foreseen and prevented such violations, the City shall be excused as to that violation for the period of time the violation continues due to such circumstances.

4. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Decree, and changed financial circumstances, shall not, in any event, serve

as the basis for changes in this Decree or extensions of time for the performance of the actions required by this Decree except under the circumstances specified in the last paragraph of section V(I) and the last paragraph of section V(J).

5. Compliance with any requirement of this Decree by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident shall not necessarily result in the extension of a subsequent compliance date or dates.

6. The City shall bear the burden of proving (1) that any delay or effluent limit violation was caused by circumstances beyond the control of the City and of any entity controlled by the City, including its contractors and consultants; (2) that the City or any entity controlled by the City could not reasonably have foreseen and prevented such violation; and (3) the number of days of noncompliance that were caused by such circumstances.

7. The United States, the Commonwealth of Massachusetts and CLF reserve any and all legal and equitable remedies available to enforce the provisions of this Decree and applicable law.

IX. FUNDING

Performance of the terms of this Decree by the City is not conditioned on the receipt of any federal or state grant funds. In addition, performance is not excused by the lack of any federal or state grant funds.

X. PENALTY FOR PAST VIOLATIONS

The City shall pay a civil penalty in the amount of \$150,000.00 in satisfaction of the plaintiffs' civil penalty claims for the City's violation of the Act and the Massachusetts Act as alleged in the Complaints through the date of entry of this Decree, to be paid as follows. Within fifteen (15) days after the date of entry of this Decree, \$75,000.00 shall be tendered to the United States Attorney for the District of Massachusetts in the form of a certified check payable to "Treasurer of the United States of America" and \$75,000.00 shall be tendered to the Attorney General of the Commonwealth in the form of a certified check payable to "Commonwealth of Massachusetts." In the event of failure to make timely payment, interest will be charged in accordance with the statutory judgment interest rates from the time the payment is due until such payment is made.

XI. STIPULATED PENALTIES

Failure by the City to comply with any requirement in this Decree shall obligate the City to pay stipulated civil penalties as follows:

- A. For each day that the City is late in submitting any report required by sections V(K)(7), VI(A)(2), or VII:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
1st day to 20th day	\$150 per day
Each day beyond the 20th day	\$300 per day

- B. For each day of violation of the compliance schedules set forth in section V other than as provided above:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
1st to 30th day	\$600 per day
31st to 90th day	\$1000 per day
Each day beyond 90th day	\$2000 per day

- C. One thousand dollars (\$1000.00) per violation per week for any failure to comply with any average weekly discharge limitation specified or referenced in paragraphs VI(A) or VI(B); two thousand dollars (\$2000.00) per violation per month for any failure to comply with any average monthly discharge limitation, monthly total dry solids removal requirement or percent removal requirement specified or referenced in paragraph VI(A) or VI(B); two thousand five hundred dollars (\$2500.00) per violation for any failure to comply with any three month moving average requirement specified or referenced in paragraph VI(A); five thousand dollars (\$5000.00) per violation for any failure to comply with any twelve month moving average requirement specified or referenced in paragraph VI(A); and four hundred dollars (\$400.00) per day per violation of any daily maximum discharge limitation specified or referenced in paragraph VI(B).
- D. Four hundred dollars (\$400.00) per day for each day that the City is late in conducting any toxicity testing or in submitting any toxicity testing report or Toxicity Reduction Evaluation report required by footnote 3 of paragraph VI(A).

Stipulated penalties shall be paid on or before the 15th day of the month following that in which the violation(s) occurred divided in two equal certified checks, one payable to "Treasurer of the United States of America" and tendered to the United States Attorney for the District of Massachusetts, and the other payable to "Commonwealth of Massachusetts" and tendered to the Attorney General of the Commonwealth. Each such check shall be accompanied by a letter describing the basis for each penalty. Copies of all such letters shall be mailed concurrently to EPA

and to DEQE, as specified in section VII(2). Nothing in this section shall be construed to limit the United States or the Commonwealth in seeking any remedy or civil or criminal penalty otherwise provided by law for any misrepresentation or material omission by the City in any report or other submission required by this Decree.

XII. RIGHT OF ENTRY

Until termination of the provisions of this Decree, EPA, DEQE and their contractors, consultants, and attorneys, shall have the authority to enter any property and/or facility covered by this Decree at all times, upon proper presentation of credentials, for the purposes of monitoring the progress of activities required by this Decree, verifying any data or information submitted in accordance with the terms of this Decree, and for obtaining any samples, and on request, splits of any samples taken by the City or its consultants. This provision in no way limits or otherwise affects any right of entry held by the United States or the Commonwealth pursuant to applicable federal or state laws, regulations, or permits.

XIII. NOT A PERMIT

This Decree is not and shall not be interpreted to be a permit, or a modification of the existing permit, issued pursuant to section 402 of the Clean Water Act, 33 U.S.C. §1342, or section 43 of the Massachusetts Act, M.G.L. C.21, §26 et seq., nor shall it in any way relieve the City of its obligation to

comply with the requirements of any applicable discharge permit or with any other federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with by the City in accordance with applicable federal and state laws and regulations.

XIV. WAIVER OF REQUEST FOR EVIDENTIARY HEARING

Within fourteen (14) days of the entry of this Decree, the City shall withdraw its Request for Evidentiary Hearing on NPDES permit number MA 0100781 and its Petition for Review of the Regional Administrator's denial of that Request. Within fourteen (14) days of the entry of this Decree, the City shall also withdraw its Claim for Adjudicatory Proceeding regarding Massachusetts permit number M-120.

XV. OBLIGATION TO COMPLY

The pendency of any proceeding concerning the issuance, reissuance, or modification of any discharge permit shall neither affect nor postpone the City's duties and liabilities as set forth herein. Further, notwithstanding any other provisions of this Decree, the obligation to achieve and maintain complete compliance with the terms, provisions, and requirements of this Decree, the Act, and the Massachusetts Act, and applicable regulations and permits rests solely with the City.

XVI. NON-WAIVER PROVISION

The United States, the Commonwealth of Massachusetts and CLF do not waive any rights or remedies available to them for

any violation by the City of the Act or Massachusetts Act and associated regulations or permit conditions following completion of the requirements of this Decree. Further, this Decree in no way affects the ability of the United States, the Commonwealth or CLF to bring an action for further relief pursuant to federal or state law for any violations not specifically the subject of this Decree. This Decree in no way affects or relieves the City of responsibility to comply with any other federal, state, or local laws or regulations.

XVII. COSTS OF SUIT

The City, the United States and the Commonwealth shall each bear its own costs and attorney's fees in this action. CLF reserves the right to seek attorneys fees as against the City.

XVIII. PUBLIC COMMENT

The parties agree and acknowledge that final approval by the United States and entry of this Decree is subject to the requirements of 28 C.F.R. §50.7, which provides for notice and an opportunity for public comment. The City, the Commonwealth, and CLF consent to the entry of this Decree without further notice. The United States consents to the entry of this Decree, subject to publication of notice thereof in the Federal Register, pursuant to 28 C.F.R. §50.7 and an opportunity to consider comments thereon.

IX. SEVERABILITY

The provisions of this Decree shall be severable and should any provision be declared by a court of competent jurisdiction to be inconsistent with federal law, and therefore unenforceable, the remaining provisions of this Decree shall remain in full force and effect.

X. RETENTION OF JURISDICTION

The Court shall retain jurisdiction to enforce, including by contempt order, the terms and conditions of this Decree, to make modifications necessary to effectuate compliance with the Act, this Decree, applicable discharge permits, the Massachusetts Act, and any applicable federal or state regulations, and to resolve all disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

XI. TERMINATION OF DECREE

When the City has paid all outstanding penalties, has completed all remedial measures specified herein and has achieved compliance with all requirements of this Decree continuously for a period of one year, then any party may move for termination of this Decree.

The Court finds that this Decree is a reasonable and fair settlement and adequately protects the public interest in accordance with the Act and the Massachusetts Act. Dated and entered this 7th day of Dec, 1987.

Dated: 12/1/87

[Signature]
United States District Judge

Consented To:

FOR THE UNITED STATES OF AMERICA:

[Signature]
ROGER J. MARZULLA
Acting Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice

10/1/87
Dated

FRANK L. McNAMARA, JR.
United States Attorney

[Signature]
NICHOLAS C. THEODOROU
Assistant United States Attorney
1107 John W. McCormack POCH
Boston, MA 02109

10/8/87
Dated

[Signature]
THOMAS L. ADAMS, JR.
Assistant Administrator for
Enforcement and Compliance Monitoring
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

SEP 14 1987
Dated

[Signature]
EDITH A. GOLDMAN
Assistant Regional Counsel
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, MA 02203

8/21/87
Dated

FOR THE COMMONWEALTH OF MASSACHUSETTS:

JAMES M. SHANNON
Attorney General

Lee P. Breckenridge
LEE P. BRECKENRIDGE
Chief, Environmental Protection Division
Department of the Attorney General
One Ashburton Place
Boston, MA 02108

8/24/87
Dated

Donald S. Bronstein
DONALD S. BRONSTEIN
Assistant Attorney General
Commonwealth of Massachusetts
Environmental Protection Division
One Ashburton Place
Boston, MA 02108

8/24/87
Dated

FOR THE CONSERVATION LAW FOUNDATION
OF NEW ENGLAND, INC.:

J. Cleve Livingston /PH
J. CLEVE LIVINGSTON
Conservation Law Foundation
of New England, Inc.
3 Joy Street
Boston, MA 02108

8/21/87
Dated

FOR THE CITY OF NEW BEDFORD:

John K. Bullard
JOHN K. BULLARD
Mayor
City Hall
133 William Street
New Bedford, MA 02740

8/20/87
Dated

Armand Fernandes, Jr.
ARMAND FERNANDES, JR.
City Solicitor
City Hall
133 William Street
New Bedford, MA 02740

Arthur J. Caron, Jr.
ARTHUR J. CARON, JR.
Assistant City Solicitor
City Hall
133 William Street
New Bedford, MA 02740

8/20/87
Dated

OF COUNSEL:

Douglas B. MacDonald
DOUGLAS B. MACDONALD
Palmer & Dodge
One Beacon Street
Boston, MA 02108

8/21/87
Dated